

Partnership Agreement

Argosy Casino Expansion Project

**By and between the Indiana Department of
Labor**

**Indiana Occupational Safety & Health
Administration/INSafe**

and

Messer Harmon, LLC

and

Messer Construction Company

and

Harmon Construction Company

and

Penn National Gaming, Inc.

November 30, 2006

I. BACKGROUND

In an effort to eliminate serious hazards and achieve a high level of worker safety and health on the Argosy Casino Expansion Project, Messer Harmon LLC and Indiana Gaming Company LP, dba Penn National Gaming, Inc. (Owner), the Indiana Department of Labor and administered by Indiana Occupational Safety and Health Administration (IOSHA) and the Indiana Department of Labor's consultation division INSafe (INSafe) and all qualifying subcontractors providing work for Messer Harmon LLC have developed a comprehensive partnering agreement. This partnering agreement will facilitate the process of identifying project health and safety performance goals; developing and implementing plans for achieving those goals; controlling hazards on the project site; measuring and establishing a process to communicate the successes and fostering a learning environment for all participants. This partnering agreement shall be limited to the Owner, IDOL, Messer Harmon LLC, and associated project employers who will be participating on this project.

This partnership is consistent with IDOL's long-range efforts to develop a partnership approach to safety and health management. It allows for better use of IDOL's resources, innovation in safety and health management, and encourages more participation in the safety and health process from the construction and trade association communities.

II. PROJECT OVERVIEW

The Argosy Casino Expansion Project will consist of an additional multi-level garage, surface parking, roadway improvements, a new harbor, a new gaming vessel and ancillary buildings to support the new gaming vessel. The project is expected to be complete in 2009. Appropriate areas of construction shall be subject to jurisdiction of the Indiana Department of Labor and the U.S. Department of Labor and shall not overlap.

III. GOALS AND OBJECTIVES

The primary goal of this partnership is to strengthen the safety effort on this project to allow workers to return home to their families in the same condition that they came to work in. This overall goal will drive the entire safety effort. All parties on this project will commit to striving for zero injuries to workers. Following are the core strategies that will allow us to accomplish the primary goal:

- A. Prompt identification and correction of anticipated or observed hazards.
- B. Total compliance with all applicable IOSHA standards.
- C. Strengthening of subcontractors' and Messer Harmon's safety programs.
- D. Development of a positive sustainable working partnership with IOSHA and INSafe on future projects.

IV. PERFORMANCE CRITERIA

This partnership agreement recognizes that IOSHA has reviewed Messer Harmon's Safety and Health Plan and deemed that it effectively addresses work site safety and health hazards. Participants in the agreement and all subcontractors will comply with all applicable IOSHA standards. Special focus will be placed on the requirements indicated below.

A. Messer Harmon LLC Role:

1. *Specific Safety and Health Contract Language* – Messer Harmon shall incorporate specific safety and health program performance requirements into all contracts including new hire orientations, weekly safety and health meetings and hazard audits.
2. *Pre-Construction Meetings* – Prior to the start of construction work, Messer Harmon shall conduct a pre-construction safety and health meeting with the successful bidders to integrate contractor programs into Messer Harmon's safety and health program expectations.
3. *New Worker Orientation* – Messer Harmon shall conduct New Worker Orientations to communicate project rules, policies, and logistics to individuals as they come on site.
4. *Monthly Meetings* – Messer Harmon and IOSHA shall conduct a monthly project safety and health meeting to discuss participant status and performance results.
5. *Qualified Safety and Health Representatives* – Messer Harmon shall assign onsite qualified safety and health personnel to administer its safety and health program.
6. *Risk Assessment* – Messer Harmon shall conduct a comprehensive risk assessment of the project and incorporate the results into the project safety and health plan.
7. *Project Specific Safety and Health Plan Guidelines* – Messer Harmon shall utilize its existing Safety and Health Program as the baseline for subcontractors' programs to meet or exceed.
8. *Weekly Safety Surveys* – Messer Harmon shall conduct weekly comprehensive safety surveys to identify hazards and monitor program effectiveness.
9. *Training* – Messer Harmon shall provide training resources for all project participants as needed.
10. *Incident Recordkeeping Database* – Messer Harmon shall maintain a project OSHA 300 Log.

B. Subcontractor Role:

1. *Project Specific Safety and Health Plan* – All subcontractors shall submit a site specific safety plan that outlines the scope of their work, the

anticipated hazards and the controls that will be utilized prior to starting work on this project to keep their workers free of injury. Contractors and their subcontractors that do not have their own written safety and health programs have the option of adopting the safety and health program of Messer Harmon.

2. *New Hire Safety Orientation* – All subcontractors shall provide new hire workers with project specific safety and health information and site instructions prior to starting work.
3. *Task Specific Weekly Tool Box Talks* – All subcontractors shall conduct weekly task specific toolbox talks with their workers and provide documentation to Messer Harmon upon completion of the toolbox talk.
4. *OSHA 10-Hour Training* – Any critical contractor with 10 or more employees on site must have at least one supervisor who has completed the OSHA 10-hour course for the construction industry (or training that meets or exceeds the 10-hour curriculum) prior to commencement of work on-site.
5. *Competent Person* – All subcontractors shall designate a competent person who will be on site, to administer their site-specific safety plan prior to their start of work at the project.
6. *Weekly Safety and Health Surveys* – All subcontractors shall conduct weekly safety and health surveys of their portion of the job site to assess compliance with all project safety requirements and IOSHA standards and submit copies of their survey documentation to Messer Harmon upon completion of the survey. Any item noted to be out of compliance shall be corrected immediately and shall not carry forward to the next week's survey.
7. *Safety Training* – All subcontractors shall provide ongoing safety and health training to workers regarding applicable hazards on this project and as required by IOSHA standards.
8. *Recordkeeping and Documentation* – All subcontractors shall maintain documentation of all safety activities as required by law and provide copies to Messer Harmon upon completion of the activity.
9. *Non-English Speaking Provisions* – All subcontractors shall assure that all workers who do not speak English be provided with the safety information and training in their native language.

C. IOSHA Role:

1. *Program Evaluation* – IOSHA shall provide an initial and continuing assessment and evaluation of Messer Harmon's compliance with the partnership agreement.
2. *Incident Trend Analysis* – IOSHA shall provide feedback on any noted incident trends and patterns.

3. *Access to Training Resources* – IOSHA shall assist in securing cost-effective training resources for partnership agreement participants. INSAFE will be available, as needed, to assist with safety and health training and consultation.
3. *Interpretation of IOSHA Standards* – IOSHA shall clarify the intent of IOSHA standards and resolve conflicts of interpretation.
4. *Compliance Strategies* – IOSHA shall provide input on compliance strategies as proposed by program participants.
5. *Employer/Participant Incentives* – IOSHA shall extend special recognition to partnership agreement contractors that voluntarily improve their safety performance. Consideration shall include limited scope focused inspections, when appropriate and allowable, good faith recognition with respect to penalty reduction and off site consultation services.
6. *Attendance at Safety Meetings* – IOSHA representatives shall periodically attend project safety meetings.

V. PERFORMANCE MEASUREMENTS

- A. Injury statistics, such as Total Recordable Rates, Days Away from Work, Days of Restricted Work Activity, etc., will be tracked and a report compiled monthly to summarize project and subcontractor injury and illness performance. This report will be provided to IOSHA on a monthly basis and available for review by project subcontractors. The goal will be to achieve a Lost Workday Incidence Rate (LWDI) below the National Average as determined by the Bureau of Labor Statistics. The LWDI for this project is established as 3.4.
- B. Documentation shall be collected to demonstrate procedural performance of project measurements.
- C. Within two (2) months of the initiation of this partnership agreement, IOSHA and Messer Harmon shall conduct a verification inspection of the project. This verification inspection will determine partnership compliance with the terms of the agreement and include a comprehensive review of the project's safety and health program.
- D. At the end of each quarter, Messer Harmon will compile and submit to IOSHA a report that evaluates the agreement's achievements and identifies areas for continued improvement.
- E. At the end of each calendar year, IOSHA and Messer Harmon shall conduct an evaluation of the partnership in order to determine any successes or areas of improvement and to make necessary adjustments or modifications of this agreement.

VI. COMMUNICATION OF RESULTS

Messer Harmon will publish a quarterly status report to document partnership agreement status and progress and provide the same to IOSHA within seven days of the end of each calendar quarter. The Partnership will be evaluated quarterly and will include data used to monitor the success of the partnership efforts. On a three-month basis the Executive Committee comprised of Messer Harmon LLC Project Executive and Safety Manager, an Owner's representative, and a representative from IOSHA shall meet to discuss the program and make any modifications as required to continually improve the Partnership. From time to time contractors and their subcontractors may be invited to attend to offer further feedback.

VII. IOSHA PARTNERSHIP PROTOCOL

This partnership agreement fully supports and recognizes the importance of employee participation. As a vital component of an effective safety and health program, the ability of employees to exercise their rights, which are guaranteed under the OSH Act, will not be infringed. Employee involvement in the worksite safety and health program will be encouraged, including employee participation in safety and health program reviews, site inspections, employee safety and health training, accident investigations, and freedom to report hazards or potential violations, including, but not limited to, near misses.

All contractors and subcontractors will participate in safety audits and briefings and ensure that their employees are kept apprised of safety and health issues on the site. A system for employees to report hazards will be developed and implemented.

Upon acceptance into the partnership program, IOSHA will provide the following incentives to participants. Participating Contractors are companies whose achievements in the area of worksite safety are outstanding, as defined herein. Acceptance into this partnership will require additional validation of a safety and health program effectively through a comprehensive onsite qualifying inspection by Messer Harmon. The qualifying inspection will be conducted on the job site by the safety staff of Messer Harmon.

- A. IOSHA will exempt all "participating contractors" from Programmed Inspections (commonly referred to as comprehensive inspections) and will not issue citations to companies for non-serious violations that are fixed immediately and in the presence of the compliance officer. This exemption from inspection shall not apply to Local Emphasis Program Inspections, which are; falls, scaffolds and national trenching emphasis programs. Such Local Emphasis Program inspections shall be location specific.
- B. Participating Contractors will receive unprogrammed inspections only in response to reports of imminent danger, fatalities/catastrophes, "plain view" violations or conditions or in the case of a signed, formal complaint.

- C. Non-formal Complaints will be handled through the phone/fax process, if the complainant agrees.
- D. During IOSHA inspections of non-participating employers, Participating Contractors will not be included in the inspection unless the inspector observes that, as a result of the partnership contractor's actions, any employees are exposed to hazards such as, but not limited to falls, electrical hazards, caught in/between hazards, or struck-by hazards.
- E. For inspections resulting from formal complaints, "drive by" inspections and/or Programmed Inspections the inspection will be limited to the complaint item(s) and "in plain view" items.
- F. During inspections, if potential violations are found, i.e., where employees are not exposed to the hazard, IOSHA may review the employer's records and provide limited on-site training as needed, so long as noted or observed hazards are abated immediately or prior to exposure to any employee.
- G. Planned Programmed Inspections (Emphasis Inspections)
- Participating Contractors will not be subjected to program inspections where verification has been conducted and completed in the past 12 months.
 - *Onsite Verification* - In order to qualify for partnership, IOSHA will conduct a verification inspection of the project within sixty (60) days of the signing of this agreement and annually thereafter. This verification will determine Participating Contractors' compliance with the terms of this agreement and include a comprehensive review of each contractor's safety and health program for its effectiveness in eliminating the four major hazards in construction (falls, electrical, caught in/between and struck-by hazards). Serious hazards related to the hazards outlined above may result in the issuance of citations and penalties.
 - *Observed Violations* - Any violations observed by IOSHA personnel while in the area of the project will be brought to attention of the Safety Director/Coordinator of the respective Participating Contractor and may not necessarily be cited if the violation is corrected in an immediate manner. IOSHA shall contact the Safety Director/Coordinator of the respective Participating Contractor who will initiate the corrective action and will report back in writing to the IOSHA by the end of the next working day. Any cited violation that is not corrected will be cited per normal IOSHA citation policies.
 - *Follow-up Inspections* - If citations are issued by IOSHA on any inspection conducted, IOSHA may conduct a follow-up inspection to verify abatement

- *Non-Participating Contractors* - Employers who elect not to participate or who are determined by OSHA, to be outside the aforementioned criteria for inclusion under this partnership agreement will be subject to traditional IOSHA inspections and enforcement actions. Participating Contractors shall provide to IOSHA a list of any and all non-participating contractors, with information regarding address, principal contact, etc. IOSHA shall provide to Messer Harmon a list of any contractors deemed not eligible for participation, with information regarding address, principal contact, etc.

IOSHA and Messer Harmon may jointly or independently have the discretion to veto companies from participating in this program. Examples of issues that could disqualify a company from participation include unpaid fines or penalties to IOSHA and/or any agency or department of the State of Indiana.


VIII. TERMINATION OF AGREEMENT


This agreement will expire when Messer Harmon activities are completed. Should either IOSHA or Messer Harmon choose to withdraw prior to that date, thirty days written notice will be given, and the partnership would terminate. If IOSHA chooses to withdraw its participation in the partnership, the entire agreement is terminated. Either party may also propose modification or amendment of the agreement, which shall be in writing, signed by each party.

IX. EFFECTIVE DATE OF AGREEMENT

This Partnership Agreement is and shall be effective as of the 30th day of November, 2006.

Messer Construction Co.



Alison Muth, Safety
Health & Environmental Vice President


Steve Keckels,
Operations Vice President

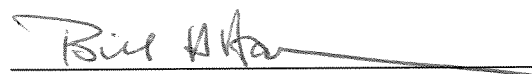
Messer Harmon LLC


Kyle McDonald, Safety Coordinator



Mark Shields, Project Executive


Robert Marzheuser, Project Executive

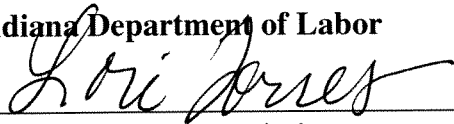
Harmon Construction Co.


Bill Harmon, President

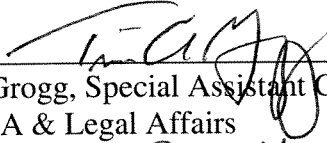
Penn National Gaming, Inc.


Michael C. McGrew
Vice President Construction

Indiana Department of Labor



Lori A. Torres, Commissioner



Tim Grogg, Special Assistant Comm. –
IOSHA & Legal Affairs



Quindaro E. Cheatham
Deputy Commissioner - INSafe